

No. 7984

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IN THE  
United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT.

ARMOUR & COMPANY, a corporation,  
*Appellant,*

*vs.*

NAT ROGAN, Collector of Internal Revenue for the Sixth Collection District of California,  
*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES OF AMERICA, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

**BRIEF FOR THE APPELLEE**

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*Appellee.*

**BRIEF FOR THE APPELLEE**

Opinion Below

The only previous opinion in the present case is that of the District Court of the United States for the Southern District of California, Central Division, rendered August 30, 1935 (R. 67), but not yet reported.

**Jurisdiction**

This appeal involves excise taxes imposed by the Agricultural Adjustment Act, as amended, upon the processing of hogs, and is taken from an interlocutory order and decree of the District Court granting appellee's motion to vacate the preliminary injunction which was entered

August 30, 1935. (R. 67.) The appeal is brought to this Court by petition for appeal on behalf of the appellant filed September 14, 1935 (R. 80-81), pursuant to Section 129 of the Judicial Code, as amended by the Act of February 13, 1925.

### Questions Presented

1. Whether this suit is prohibited by Section 3224 of the Revised Statutes.

2. Whether this suit may be maintained where the appellant has a plain, adequate, and complete remedy at law.

3. Whether the bill presents a substantial question on the merits.

### Statutes Involved

The applicable provisions of the statutes involved will be found in Appendices A and B in the brief for appellee in the case of *Standard Packing Company v. Nat Rogan, Collector*, No. 7981, now pending before this Court.

### Statement

This suit was commenced in the District Court for the Southern District of California, Central Division, on August 3, 1935, by Armour & Company, a corporation, as plaintiff, against Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, as defendant. (R. 3, 46.) From the bill of complaint and petition for injunction (R. 3-46) and the supplemental bill of complaint (R. 73-79), it appears that appellant is

a New Jersey corporation with its principal offices and place of business at Chicago, Illinois, and authorized to do business in the State of California with an office and place of business at Los Angeles in said State, where it is engaged in the business of processing hogs within the purview of the Agricultural Adjustment Act (R. 3). The appellee Nat Rogan is United States Collector of Internal Revenue at Los Angeles, California. (R. 4.)

At the time of filing the bill of complaint, processing taxes had been assessed against appellant with respect to the processing by it of hogs during the month of June, 1935, in the amount of \$15,789.69, which became due and payable on or before July 31, 1935, under the terms of the Agricultural Adjustment Act. (R. 13.)

Appellant avers that unless such tax is paid within ten days from the receipt of notice and demand, the appellee will proceed to collect the tax by summary or other proceedings, and that such failure of payment will cause appellant to be liable to the imposition of interest and penalties and its property subjected to a lien. (R. 13.)

The bill prays for temporary and thereafter permanent injunction against the appellee, restraining him from collecting or attempting to collect in any manner said taxes from appellant. (R. 25-27.) As a basis for such injunctive relief, the bill charges that the Agricultural Adjustment Act, as amended, is unconstitutional, and the taxes imposed thereunder are illegal for reasons not here material (R. 16-24); that there is a threat of removal of appellant's remedy at law to litigate the validity of such tax and the constitutionality of said Act because there

was pending before the Congress a bill amendatory of the Agricultural Adjustment Act, which purported to deny to a processor the right to bring suit for the refund of processing taxes in the event said Act should be declared unconstitutional (R. 22); that in the event appellant fails to pay said taxes then due and those thereafter accruing, it will be subject to the imposition of heavy criminal and other penalties thereby irreparably injuring its business, good will and credit, and subjecting it to a multiplicity of suits (R. 23).

The court issued a temporary restraining order and rule to show cause, returnable August 9, 1935 (R. 47-48), on which date the court ordered the issuance of a preliminary injunction (R. 53), which was entered on August 15, 1935 (R. 54-58). Prior to the hearing on the motion for preliminary injunction, appellee filed a motion to dismiss the bill of complaint (R. 51-52), which motion was denied (R. 53).

Under date of August 22, 1935, appellee Nat Rogan filed his motion to vacate the injunction theretofore granted in said cause (R. 62-64), which motion was sustained on August 30, 1935 (R. 67-68). This appeal is from the interlocutory decree sustaining appellee's motion to vacate the preliminary injunction. (R. 80-97.)

Subsequent to the entry of the order sustaining appellee's motion to dissolve said injunction, appellant filed its supplemental bill of complaint (R. 73), which pleads the enactment of amendments to the Agricultural Adjustment Act which became effective August 24, 1935, and charges that said amendments have taken away from



appellant all remedy at law for the recovery of processing taxes, and that such amendments are void, invalid and unconstitutional, upon the grounds set forth in the original bill of complaint as to the validity and unconstitutionality of the Act prior to the amendment. The supplemental bill further avers that additional processing taxes for succeeding months, including the month of August, 1935, have accrued, become due and payable, and that appellant's property is liable to distraint and seizure unless such taxes are paid. (R. 73-78.) An injunction pending appeal has been granted by this Court.

### Argument

This appeal involves the identical questions that are presented in the appeal of *Standard Packing Company v. Nat Rogan, Collector*, No. 7981, now pending before this Court. The appellee's position is fully presented in the brief for the appellee filed in that case. It will, therefore, not be repeated here but is included herein by reference. Accordingly, copies of appellee's brief in that appeal are served herewith upon counsel for the appellant.

### Conclusion

For the reasons stated in the brief for appellee in the appeal of *Standard Packing Company v. Nat Rogan, Collector*, No. 7981, it is urged that the court below correctly denied appellant's motion for preliminary injunction. Because the court below is without jurisdiction to restrain or enjoin the collection of the taxes described in the bill, or to hear and/or determine the issues presented by said bill of complaint, it is urged that this case be

remanded to the District Court with instructions to dismiss the bill.

Respectfully submitted,

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November, 1935.